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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,022	07/13/2001	Chon-si Lai	6816.US.01	2509

25755 7590 06/15/2004

ROSS PRODUCTS DIVISION OF ABBOTT LABORATORIES
DEPARTMENT 108140-DS/1
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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/905,022

Applicant(s)

LAI ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Examiner acknowledges receipt of petition to revive application, request for continued examination, amendment and remarks, all filed 03/30/07. Petition to revive application was granted on 04/07/04. Claim 15 is pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 03/30/04 has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jaussan et al. (EP 0 898 900).

Jaussan teaches a liquid nutritional composition comprising a protein source, a lipid source, a carbohydrate source and a fiber mixture of viscous soluble fiber and inulin (claim 2). The protein source is from milk protein or whey protein or casein protein or soy protein or mixtures of these proteins; and the protein source provides about 10-20% of the energy (page 3, lines 40-45). The carbohydrate source provides about 40-50% of the energy (page 3, lines 43-56); and the lipid source provides about 30%-50% of the energy (page 4, lines 7-10).

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Jaussan teaches the liquid nutritional formulation of the invention except that the prior art is silent on the weight percent amounts of the protein supplied by caseinate and whey or soy. In this case the, the prior art discloses the energy provided by the proteins and other sources of protein are rice, oat, pea and mixtures thereof (page 3, line 43). Jaussan discloses the general conditions of the instant claim. It is also respectfully noted that the including language permits the presence of other ingredients/components in the liquid nutritional composition. Generally, amounts of ingredients will not support the patentability of the subject matter encompassed by the prior art unless there is evidence indicating that to be the case. In the present case, there is no demonstration that the recited amounts of the caseinate protein and the vegetable or whey protein provides unusual results. It is also respectfully noted that the method of reducing creaming of the liquid composition involves incorporating proteins and since in the prior art the liquid composition has incorporated within it proteins, it would be expected that creaming would be reduced.

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to prepare the liquid nutritional formulation of Jaussan. One having ordinary skill in the art would have been motivated to optimize the formulation by optimizing the amount of the casein protein and the other proteins with the expectation that the formulation will provide the required energy to the individual taking it.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hahn (US 6,241,996) discloses enteral nutritional dietary composition and the composition comprises about 10% in weight caseinates (abstract, column 3, lines 38 and 39 and

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column 5, lines 12-22), about 20% soy protein (column 4, lines 22-26), a protein stabilizer, water, carbohydrate source and oil (claims 1-27 and example 5).


Hoie (US 6,268,011) discloses a composition comprising soy protein, soybean fibers, optional additional protein source, carbohydrate source, fat source, flavoring agents, vitamins, minerals, electrolytes and trace elements (abstract).

Brog (US 4,397,927) teaches a composition comprising caseinate, corn syrup solids or cane sugar, fat, whey solids, lactose, protein and minerals (abstract and examples II and IV).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 242-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Blessing Fubara
Patent Examiner
Tech. Center 1600